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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
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In the matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-152
Telecommunications Act of 1996:	)	
	)	
Telemessaging, Electronic Publishing,	)	
and Alarm Monitoring Services	)	

Reply Comments of the Yellow Pages Publishers Association

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## Executive Summary of the Reply Comments of the Yellow Pages Publishers Association

YPPA agrees with most of the comments filed in this proceeding where such comments address electronic publishing, with the exception of comments filed by AT&T, MCI and Time Warner. Congress intended section 274 to be self-executing. YPPA urges the Commission to not impose additional requirements beyond the statute, but rather to simply enforce the statutory requirements of section 274.

One issue where YPPA disagrees with AT&T and Time Warner is the meaning and significance of "operational independence." While AT&T and Time Warner would like the Commission to impose a host of additional rules in the name of operational independence, the language requiring the Bell operating company (BOC) and the separated affiliate to operate independently is in the preamble portion of subsection 274(b). Congress defines Operational independence in paragraphs 274(b)(1) through (9), and the Commission need not impose any additional rules.

YPPA also disagrees with AT&T on the sharing of property. AT&T claims that the Commission should prevent a BOC and its separated affiliate from jointly leasing property. There is, however, no statutory basis for expanding this prohibition. A BOC and a separated affiliate may lease property together, so long as the financial obligations of each are clearly delineated, and, if one party defaults on its obligation, the lessor has no recourse against the non-defaulting party. Additionally, the BOC should be able to lease space to the separated affiliate, and the separated affiliate to the BOC, so long as the transaction meets the other requirements of section 274.

There appears to be some contention about whether electronic publishing services should be regulated under section 272, section 274, or both. YPPA firmly believes that interLATA and intraLATA electronic publishing services are regulated according to section 274, and not section 272. Additionally, if electronic publishing services are offered in the same affiliate as services subject to section 272, the affiliate must comply with the structural safeguards of both section 272 and 274, but need only comply with the non-structural safeguards relating to the specific service provided. The Commission regulates based upon the nature of the service a company provides, not upon the nature of the company itself.

Regarding joint marketing, Time Warner and AT&T assert that the prohibition should be rewritten to encompass the separate affiliate's marketing the BOC's services. This assertion, however, flies in the face of one of the main goals of the Telecommunications Act of 1996 -- to permit customers to engage in one-stop shopping for all their telecommunications needs. Ability for consumers to engage in one-stop shopping is the key reason why the separated affiliate is permitted to joint market BOC telephone services with its electronic publishing services.

Time Warner also asserts that paragraph 274(b)(6) prohibits the use of the name, trademarks, or service marks of a BOC holding company (RBOC), if the name, trademark, or service mark is shared by the BOC. The statute, however, specifically permits such use. Congress intended that the separated affiliate be permitted to use an RBOC name, trademark, or service mark without restriction. The fact that the BOC may now share that name, trademark, or service mark is irrelevant.

Finally, AT&T, MCI and Time Warner assert that the Commission should impose additional regulations under section 274(d). The language of the statute, however, is clear -- network access and interconnection for basic telephone service is to be available at just and reasonable tariffed rates, and should be the same for all similarly situated electronic publishers, whether affiliated with the BOC or not. There is no need for the imposition of additional regulations.

Section 274's requirements are clear. Congress imposed this regime, and determined that the rules contained in section 274 will protect consumers and allow for fair and meaningful competition in the delivery of electronic publishing services. The Commission should ignore the calls of certain companies to impose additional overreaching rules when considering rules implementing section 274.

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Telemessaging, Electronic Publishing,	)	
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To: The Commission		

Reply Comments of the Yellow Pages Publishers Association

The Yellow Pages Publishers Association ("YPPA"), by its attorneys, hereby submits Reply Comments in response to Comments to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.

**I. Introduction**

YPPA agrees with most of the comments filed in this proceeding where such comments address electronic publishing. There are, however, three glaring exceptions -- comments filed by AT&T, MCI and Time Warner. While most parties urge the Commission to closely follow the statutory language of section 274, AT&T, MCI and Time Warner ask the Commission to impose burdens on electronic publishing which go way beyond Congressional intent. YPPA urges the Commission to not regulate electronic publishing with a heavy hand, but rather to simply enforce the statutory requirements of section 274.

While Congress specifically required the Commission to effectuate dozens of rulemakings, Congress did not require a separate rulemaking for section 274. Had Congress expected the Commission to promulgate rules for this section, Congress would have made the

effective compliance date for grandfathered services in paragraph 274(g)(1) one year after rules are promulgated, instead of one year after enactment.

The provisions of section 274 are carefully crafted, and explicit. Congress intended the section to be self-executing. The Commission can provide useful guidance, but the Commission should not take this opportunity to second guess Congress and impose additional burdens on electronic publishers.<sup>1/</sup>

## **II. Operational Independence**

The Commission asks, in paragraph 35, about the meaning of the term "operated independently." Time Warner asserts that "[t]he independent operation requirement is a specific obligation that requires amplification and implementation by the Commission."<sup>2/</sup> AT&T agrees, stating that the operational independence language "imposes a more general standard of conduct on the BOCs going beyond the nine specific and more limited structural and transaction requirements set forth in the subsections of section 274."<sup>3/</sup> However, statutory construction does not support this view.

As YPPA noted in its initial comments, the language requiring the Bell operating company (BOC) and the separated affiliate to operate independently is in the preamble

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<sup>1/</sup> See, *MCI v. AT&T*, 129 L. Ed 2d 182, 192 (1994) ("... an agency's interpretation of a statute is not entitled to deference when it goes beyond the meaning the statute can bear.") (Cites omitted).

<sup>2/</sup> Time Warner Comments at 12.

<sup>3/</sup> AT&T Comments at 13.

portion of subsection 274(b). The substantive requirements are the specifically enumerated requirements which follow in paragraphs 274(b)(1) through (9).

Congress defines Operational independence in paragraphs 274(b)(1) through (9). If Congress had intended for the Commission to impose additional burdens based on operational independence, Congress would have required the Commission to engage in a rulemaking to define what constitutes operational independence. Instead, Congress told the Commission that operational independence is achieved by meeting the nine specific criteria of paragraphs 274(b)(1) through (9) -- nothing more and nothing less. The Commission must resist the invitation extended by Time Warner and AT&T to use the operational independence preamble language to impose additional safeguards.

### **III. Sharing of Property**

Subparagraph 274(b)(5)(B) prohibits the BOC and the separated electronic publishing affiliate from owning property in common. The Commission, in paragraph 42, asks whether a separated affiliate may lease space from or share space with the BOC and *vice versa*.

AT&T responded that the Commission should prevent a BOC and its separated affiliate from jointly leasing property.<sup>4/</sup> There is, however, no statutory basis for expanding this prohibition. Congress only limited joint ownership of property. One of the policy reasons for prohibiting joint ownership of property is that ownership of property often entails significant liability -- much more so than leasing of property. Just as the separated affiliate cannot incur debt where the creditor has recourse to the assets of the BOC, the prohibition

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<sup>4/</sup> AT&T Comments at 17.



against joint ownership of property is designed to protect ratepayers should the separated affiliate default on its share of the mortgage payments, as joint owners of property (in this case, the BOC and the separated affiliate) may be individually liable for the mortgage on that property.

Leases, however, entail different obligations. A financial obligation on a lease is invariably much less than the financial obligation of property ownership. A BOC and a separated affiliate may lease property together, so long as the financial obligations of each are clearly delineated, and, if one party defaults on its obligation, the lessor has no recourse against the non-defaulting party. Additionally, the BOC should be able to lease space to the separated affiliate, and the separated affiliate to the BOC, so long as the transaction meets the other requirements of section 274. The Newspaper Association of America agrees, stating "a BOC and a separated affiliate are not prohibited from sharing the use of property owned by one entity or the other or from jointly leasing any property. In such cases, the Commission's affiliate transaction rules would act as a safeguard against cross-subsidy."<sup>5/</sup> We urge the Commission to, once again, closely follow Congressional intent and not impose any burdens greater than those specifically imposed in the statute.

#### **IV. The Relationship of Sections 272 and 274**

In paragraphs 47 and 48, the Commission explores the relationship between services provided under section 272 and services provided under section 274. AT&T, MCI, and

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<sup>5/</sup> Newspaper Association of America Comments at 5.

Time Warner<sup>6/</sup> all argue that, should a BOC separated affiliate provide electronic publishing services and other services requiring a section 272 affiliate (such as interLATA telecommunications services), that the affiliate must meet all the requirements for both sections in providing that service.

That position is not supported by the Commission's regulation of services today. The Commission regulates based upon the nature of the service a company provides, not upon the nature of the company itself. For example, a rural telephone company providing cable services in its service territory is regulated under Title II for telephone service and Title VI for cable service. To extend the logic of AT&T, MCI, and Time Warner would be to conclude that cable services provided by that rural telephone company must meet the common carriage requirements of Title II, and telephony service must meet the franchise and customer service obligations of Title VI. Clearly, that is not the case.

While an affiliate providing both electronic publishing and interLATA telecommunications services must meet the structural requirements of both sections 272 and 274 in order to initially provide those services under one roof, the non-structural requirements of sections 272 and 274 (such as the affiliate transaction requirements), cannot meaningfully be applied on an entity-wide basis and must be applied on a service-by-service basis. As an example, should a BOC decide to offer interLATA telecommunications services and electronic publishing through the same affiliate, the affiliate would have to meet the structural separation requirements of both section 272(b) and section 274(b). Yet, when

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<sup>6/</sup> AT&T Comments at 19; MCI Comments at 6; and Time Warner Comments at 31.

providing interLATA telecommunications services, the affiliate would be required to follow the affiliate transaction requirements of section 272(b)(5), but when providing electronic publishing, the affiliate would be required to follow the affiliate transaction requirements of section 274(b)(3).

AT&T further asserts that all interLATA electronic publishing should be subject to section 272 requirements, and that section 274 merely supplements the requirements of section 272.<sup>7/</sup> AT&T's specious argument relies on a tortured statutory construction. Congress promulgated specific rules for three specific services, including electronic publishing. If Congress has intended that interLATA electronic publishing also be subject to section 272, section 274 would have referenced that the requirements contained therein are to in addition to or subject to those of section 272 for interLATA electronic publishing. Instead, Congress chose to subject interLATA and intraLATA electronic publishing exclusively to the requirements of section 274.

## **V. Joint Marketing**

Paragraph 274(c)(1) prohibits the BOC from joint marketing its local exchange services with the electronic publishing services of the separated affiliate, with several permitted activities enumerated in paragraph 274(c)(2). Time Warner and AT&T assert that the prohibition should be rewritten to encompass the separate affiliate's marketing the BOC's services.<sup>8/</sup>

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<sup>7/</sup> AT&T Comments at 2-4.

<sup>8/</sup> Time Warner Comments at 25; and AT&T Comments at 20.

This assertion, however, flies in the face of one of the main goals of the Telecommunications Act of 1996 -- to permit customers to engage in one-stop shopping for all their telecommunications needs.<sup>9/</sup> The Commission recognizes this, and in reviewing the benefits of the Telecommunications Act of 1996 states, "BOCs can offer a widely recognized brand name that is associated with telecommunications services, the benefit of 'one-stop shopping,' and other advantages of vertical integration."<sup>10/</sup> It is easier for the consumer to deal with one vendor for telecommunications services, rather than multiple vendors. Every entity, other than the BOCs, is both free and likely to engage in such joint marketing. That is the key reason why the separated affiliate is permitted to joint market BOC telephone services with its electronic publishing services.<sup>11/</sup>

#### **VI. Use of RBOC Trademarks**

Time Warner concludes that paragraph 274(b)(6) prohibits the use of the name, trademarks, or service marks of a BOC holding company (RBOC), if the name, trademark,

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<sup>9/</sup> See, Report of the Senate Committee on Commerce, Science, and Transportation on S. 652, S. Rpt. 104-23 at p. 23, (March 30, 1995) ("The Committee believes that the ability to bundle telecommunications, information, and cable services into a single package to create "one-stop-shopping" will be a significant competitive marketing tool.").

<sup>10/</sup> NPRM at paragraph 7.

<sup>11/</sup> YPPA notes that Congress did place some conditions on BOC affiliate joint marketing under section 272(g)(1), but declined to place similar restrictions on section 274 separated affiliates.

or service mark is shared by the BOC.<sup>12/</sup> The statute, however, specifically permits such use. Paragraph 274(b)(6) reads:

(b) ... Such separated affiliate or joint venture and the Bell operating company with which it is affiliated shall--...

(6) not use for the marketing of any product or service of the separated affiliate or joint venture, the name, trademarks, or service marks of an existing Bell operating company except for names, trademarks, or service marks that are owned by the entity that owns or controls the Bell operating company. (Emphasis added.)

Clearly, Congress intended that the separated affiliate be permitted to use an RBOC name, trademark, or service mark without restriction. The fact that the BOC may now share that name, trademark, or service mark is irrelevant.

Essentially, Time Warner argues that allowing this use will allow a customer to know that the separated affiliate is affiliated with the RBOC. Time Warner wants the separated affiliate to hide this fact.<sup>13/</sup> YPPA believes that the customer has a right to know if it is purchasing electronic publishing services from a separated affiliate of an RBOC. Certainly, Time Warner would not want to "unbrand" its cable service or information service. But that is exactly what Time Warner is asking the Commission to impose on the separated affiliate. Congress clearly allows the unrestricted use of the RBOC's name, trademarks and service marks. The Commission should not rewrite the statute to mean something other than the plain meaning of the provision.

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<sup>12/</sup> Time Warner Comments at 16-17.

<sup>13/</sup> Id.

## **VII. Non-Discrimination**

In paragraphs 64 through 67, the Commission asks whether additional regulations are necessary to implement the non-discrimination requirements of section 274(d). AT&T, MCI and Time Warner assert that the Commission should impose additional regulations under this section.<sup>14/</sup>

YPPA disagrees with AT&T, MCI and Time Warner. The statute requires that network access and interconnection for basic telephone service be just, reasonable, and according to a filed tariff (so long as rates for such services are subject to regulation). The rates charged to affiliated and unaffiliated electronic publishers must, according to section 274(d), be the same. There is no need for additional rules and regulations to implement this section. The language of the statute is clear -- network access and interconnection for basic telephone service is to be available at just and reasonable tariffed rates, and should be the same for all similarly situated electronic publishers, whether affiliated with the BOC or not.

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<sup>14/</sup> AT&T Comments at 21-22; MCI Comments at 6-7; and Time Warner Comments at 21-22.

### **VIII. Conclusion**

Section 274's requirements are clear. Congress imposed this regime, and determined that the rules contained in section 274 will protect consumers and allow for fair and meaningful competition in the delivery of electronic publishing services. The Commission should ignore the calls of certain companies to impose additional overreaching rules when considering rules implementing section 274. The Commission should not regulate electronic publishing with a heavy hand.

Respectfully submitted,



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September 20, 1996

CERTIFICATE OF SERVICE

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